

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA

2 BOARD OF ZONING ADJUSTMENT

3 SPECIAL PUBLIC HEARING

4 WEDNESDAY,

5 MARCH 19, 1997

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14 The Board met in Hearing Room 220 South at 441  
15 Fourth Street, N.W., Washington, D.C., at 10:00 a.m., Susan  
16 Morgan Hinton, Chairperson, presiding.  
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18  
19  
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21

22 PRESENT:

23  
24 SUSAN MORGAN HINTON, Chairperson  
25 MAYBELLE TAYLOR BENNETT  
26 LAURA M. RICHARDS  
27

28  
29 STAFF PRESENT:  
30

31 MADELIENE H. DOBBINS, Director  
32 REGINALD C. LYONS, Secretary  
33 TRACEY WITTEN ROSE, Assistant Secretary  
34

35  
36 ALSO PRESENT:  
37

38 ALBERTO BASTIDA, Office of Planning  
39 BEVERLY BAILEY, Office of Planning  
40

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## MOTIONS

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Meeting adjourned

1

1 P-R-O-C-E-E-D-I-N-G-S

2 10:00 a.m.

3 CHAIRPERSON HINTON: Call the meeting to order.  
4 Special Public Meeting of March 19th.

5 MS. DOBBINS: Okay, good morning, Madam  
6 Chairman, Members of the Board. This is the Board's Special  
7 Meeting, March 19, 1997.

8 You have two items on the agenda. Actually, you  
9 have three. The first item is under motions. It's 16035.  
10 This is the request of Maybelle Taylor Bennett pursuant to  
11 Subsection 3332.7 of the Board's Rules to move the Board in  
12 its own motion to reconsider the order dated March 14, 1997 in  
13 the application of David A. and Robert Schaefer, pursuant to  
14 11 DCMR 3108.1, for a special exception under Section 203.10  
15 to establish a home occupation that is beyond the scope of the  
16 zoning regulations as a meeting location for business and  
17 social events in an R-1-B district at 5001 16th Street, N.W.  
18 This is Square 2713, Lot 23.

19 It was heard May 10, 1995. Decision dates are  
20 June 7th and July 12th 1995. The Board granted the  
21 application by a vote of 3 to 2. Mr. Clarens, Ms. Hinton and  
22 Ms. Bennett to grant; Mr. Ellis and Ms. Richards opposed to  
23 the motion. The final date of the order was March 14th 1997.

24 You have a copy of the final order and you also  
25 have a copy of the Zoning Commission meeting minutes from  
26 August of 1995. This is before you for action.

1                   CHAIRPERSON HINTON: Do you want to take a  
2 minute to review the minutes?

3                   Ms. Bennett, why don't you bring us up to date.  
4 This item was discussed by the Zoning Commission?

5                   MS. BENNETT: Yes, it was. If you will recall,  
6 Madam Chair, at the time that we took this vote, there were  
7 those of us -- even those of us who were in favor of the vote  
8 -- who were concerned about our interpretation of the  
9 regulations. And we were so concerned that I was directed to  
10 return to the Zoning Commission to get a sense of the Zoning  
11 Commission's understanding of what they had in mind when they  
12 passed the Home Occupation Regulations.

13                  At that time, I did so. I went ahead and voted  
14 in favor of this -- I guess it's 16035 because I thought it  
15 was a judgment call. Certainly, the Board of Zoning  
16 Adjustment has some discretion in its interpretation of  
17 regulations, what do they look like when they hit the  
18 pavement. On page 6 of the Zoning Commission's regular  
19 meeting minutes, beginning at the bottom, X, there is a  
20 discussion of what the Board did and the fact that the Board  
21 had asked me to bring this back to the Commission.

22                  Item six, and I'm sorry it wasn't spelled out in  
23 a little bit more detail, reads: "The Commission suggested  
24 that its current member on the BZA", and that's myself,  
25 "should inform the BZA of the Commission's discussion and take  
26 action as required by the discussion at the appropriate time."

1       What it fails to say is what they said, and so do the minutes  
2       sometimes. But be assured that what they said was that it was  
3       not anticipated that when we passed the Home Occupations  
4       Regulations that a home itself might be used as a place of  
5       public assembly.

6                 That as a result, the error that I believe we  
7       made was that in our interpretation of 203.10 we, in effect,  
8       our motion or our action constituted a de facto amendment to  
9       the zoning regulations. The leasing of one's home for public  
10      assembly purposes, whether it's for meetings or wedding  
11      receptions or whatever, was not intended within the definition  
12      of home occupations. And if you recall, the regulations were  
13      carefully tailored so that we could ensure that the practice  
14      of one's profession in one's home didn't change the character  
15      of the neighborhood, didn't change the intensity of the use in  
16      a way that would alter the neighborhood's character, did not  
17      generate traffic volumes or change the physical appearance of  
18      a residence. That permitting the kind of activity that the  
19      applicant asked for opens the possibility of changing the use  
20      of the building in ways that I know now that the Zoning  
21      Commission did not intend, even if it's over a short period of  
22      time.

23                In this case, as my colleagues will remember,  
24      the neighbors did not feel that this use would be obtrusive  
25      and that it was not going to cause the kind of disruption that  
26      one could envision could happen if we opened this particular

1 door. And so, not only did the Zoning Commission anticipate  
2 this, but in other areas where the same kind of request might  
3 come forth, it could be extremely destabilizing in a  
4 community. And so, based on those reasons, I would move that  
5 the Board reconsider Order 16035.

6 CHAIRPERSON HINTON: Very good.

7 I also sat on the case and voted, actually, to  
8 grant the relief. Receiving the order recently, I went back  
9 and read through the regulations and I, too, wondered whether  
10 we made the right decision. I think that this case is  
11 squarely on the fence. Our dilemma is to put it on one side  
12 or the other.

13 MS. BENNETT: Right.

14 CHAIRPERSON HINTON: There are different ways to  
15 look at it. But having that guidance from the Zoning  
16 Commission which you just told us about, and realizing that in  
17 the Home Occupation Regulations, the only area that  
18 contemplates sort of a rental of space is the bed and  
19 breakfast, and that is very carefully limited --

20 MS. BENNETT: That's right.

21 CHAIRPERSON HINTON: -- to two rooms or four  
22 rooms.

23 So, I would second your motion to reconsider the  
24 case.

25 MS. RICHARDS: Madam Chairperson, as a  
26 procedural point, are you like separating the reconsideration

1 from a decision on the merits -- reconsideration?

2 CHAIRPERSON HINTON: Yes, all right. I think  
3 our regulations say we need to have substantial reasons for  
4 reconsideration and we were just talking about --

5 MS. BENNETT: We were identifying what those  
6 reasons are.

7 CHAIRPERSON HINTON: The reasons are to  
8 reconsider, but not the merits of the case, okay?

9 MS. RICHARDS: All right.

10 CHAIRPERSON HINTON: So, we have a second. Why  
11 don't we vote?

12 All those in favor?

13 ALL: Aye.

14 CHAIRPERSON HINTON: Okay, that motion carries.

15 MS. BENNETT: We have a vote from Mr. Clarens.

16 MR. LYONS: Mr. Clarens would submit an absentee  
17 vote in opposition to the motion and staff would therefore  
18 record the vote as being 3 to 1 to reconsider the Board's  
19 order. Ms. Bennett, Ms. Hinton, and Ms. Richards to  
20 reconsider; Mr. Clarens opposed to the motion; Ms. Reid not  
21 present, not voting, not having heard the case.

22 MS. BENNETT: Right.

23 CHAIRPERSON HINTON: Did Mr. Clarens have a copy  
24 of the minutes from the Zoning Commission meeting?

25 MR. LYONS: No, he did not.

26 CHAIRPERSON HINTON: So, he didn't have the

1 material for the case?

2 MR. LYONS: That's correct.

3 CHAIRPERSON HINTON: So, perhaps --

4 MR. LYONS: That you have before you today, no,  
5 he did not.

6 CHAIRPERSON HINTON: So, generally, we don't  
7 vote when we haven't --

8 MR. LYONS: He was aware of the basic view of  
9 the Commission.

10 CHAIRPERSON HINTON: Okay. Okay.

11 MS. BENNETT: What is our next step, Madam  
12 Chair?

13 CHAIRPERSON HINTON: Well, that's what I'm  
14 looking at. We would need to schedule it for reconsideration,  
15 and we have Clarens, Hinton, Bennett, and Richards still left  
16 on the Board from the original members. We could have Ms.  
17 Reid read the record, if we feel that's necessary. We would  
18 have to schedule a special meeting in order to hear this  
19 before the end of March if we find it's important for Mr.  
20 Clarens to participate.

21 MS. DOBBINS: Do you feel you need to hear  
22 something on this? You've made your motion to reconsider.  
23 You can do it right now if you choose to?

24 MS. BENNETT: I'm ready to do it right now,  
25 Madam Chair. I mean, what we would need to do, as I  
26 understand it, to vacate the previous order -- what I had done



1 is to take a look at the order and to make suggestions about  
2 how it might be changed in terms of, first of all, findings of  
3 fact and some conclusions which would --

4 MS. DOBBINS: You would vacate your decision,  
5 not your order.

6 CHAIRPERSON HINTON: Okay.

7 MS. BENNETT: -- change. Yes. So, if we could  
8 vacate the decision and modify the order to reflect basically  
9 what was said, then I guess we could move forward. Is that  
10 possible?

11 MS. DOBBINS: Well, this order is going to stand  
12 on its own because it has been issued.

13 MS. BENNETT: Okay.

14 MS. DOBBINS: So, what you would have is a  
15 reconsideration order --

16 MS. BENNETT: Okay, all right.

17 MS. DOBBINS: -- that would have the information  
18 in it.

19 CHAIRPERSON HINTON: Okay, let me check with Ms.  
20 Richards.

21 Are you prepared to discuss today?

22 MS. RICHARDS: Well, no. I knew that this was  
23 going to be before us because I was orally informed, but I did  
24 not see the material until today.

25 MS. BENNETT: Oh, okay.

26 MS. RICHARDS: I will be ready to do it at our

1 next meeting.

2 MS. BENNETT: All right. That will work.

3 MS. RICHARDS: I will make my comments then.

4 CHAIRPERSON HINTON: I think that will work.

5 MS. DOBBINS: So, we'll put it on the monthly  
6 meeting agenda?

7 CHAIRPERSON HINTON: Yes, and we'll still have a  
8 quorum without anyone reading the record.

9 MS. DOBBINS: That's correct.

10 CHAIRPERSON HINTON: Very good. So, that will  
11 be on for April?

12 MS. DOBBINS: That's right.

13 CHAIRPERSON HINTON: Okay.

14 MS. DOBBINS: The next item you have is under  
15 "Other Matters". This is correspondence and it's regarding  
16 the 15129, a letter from Laurence Aurbach requesting the Board  
17 dismiss the Woodland Normanstone Neighborhood Association from  
18 the appeal of Richard B. Nettler on behalf of the Woodland  
19 Normanstone Neighborhood Association.

20 I'm not going to read this into the record. You  
21 do not have enough members to take any action associated with  
22 this particular appeal. Staff will have to get this record  
23 out to Board members. Ms. Bennett is the only person left who  
24 participated in this appeal. So, at this point, I assume we  
25 will send the record to Ms. Hinton, Ms. Richards, Ms. Reid.

26 CHAIRPERSON HINTON: Some of us have the record.

1 MS. RICHARDS: We received the record in this  
2 matter.

3 MS. DOBBINS: Okay.

4 CHAIRPERSON HINTON: I still have the record.  
5 Do you still have the record?

6 MS. RICHARDS: Yes.

7 CHAIRPERSON HINTON: We still have the record  
8 and I'm sure some of us have read it. But nevertheless --

9 MS. DOBBINS: There are three of you then  
10 sitting here now, who have read the record.

11 CHAIRPERSON HINTON: That's right.

12 You did read it?

13 MS. RICHARDS: Yes.

14 CHAIRPERSON HINTON: I did read it. So, we can  
15 deal with it.

16 MS. DOBBINS: Okay, let's ask Ms. Reid if she  
17 got it also.

18 CHAIRPERSON HINTON: I would be surprised if Ms.  
19 Reid got it.

20 Ms. Reid didn't have the record. Why don't we  
21 see how far we can get with the Board members that are here.

22 This is a request?

23 MS. DOBBINS: Yes, it's a request from Laurence  
24 Aurbach that the Board dismiss the Woodland Normanstone  
25 Neighborhood Association from the appeal. And this is from  
26 the decision of Hampton Cross, Administrator, and Joseph

1       Bottner, Zoning Administrator, Building and Land Regulation  
2       Administration. It was made on April 4, 1989 to the effect  
3       that development of Lots 37 and 38 in Square 2140 comply with  
4       the zoning regulations for the construction of single-family  
5       dwellings in an R-1-A district. It premises 2804 Woodland  
6       Drive, N.W. This is Square 2140, Lots 37 and 38.

7               It was heard September 27th and October 4, 1989.  
8       Decision dates, November 15th and December 6, 1989. On  
9       November 15, 1989, the Board granted an emergency stay of  
10      construction on Lot 46 until December 6, 1989 by a vote of 3  
11      to 2. Ms. Bennett, Ms. Jewell, Mr. Norris to grant; Mr.  
12      McIntosh opposed to the motion; Ms. Thornhill opposed to the  
13      motion by absentee vote.

14             On December 6, 1989, the Board dismissed Appeal  
15      Number 15129 and portions of Appeal Number 15136 related to  
16      Lots 37 and 38 by a vote of 5 to zero. Ms. Bennett, Mr.  
17      Norris, Ms. Jewell, Mr. McIntosh, and Ms. Thornhill to  
18      dismiss. The Board denied the remainder of Appeal Number  
19      15136 by a vote of 5 to zero. Mr. Norris, Ms. Bennett, Ms.  
20      Jewell, Mr. McIntosh, and Ms. Thornhill to deny.

21             As you know, this case went to court and it was  
22      remanded by the court to the Board to make specific findings  
23      in this case. What you have in front of you is correspondence  
24      requesting that the Woodland Normanstone Association be  
25      allowed to withdraw from the appeal. And you also have, that  
26      was received yesterday, a letter from the ANC that was

1 associated with this case.

2 CHAIRPERSON HINTON: Okay, well, that's an  
3 interesting letter from Mr. Mendelson. And actually, it  
4 raises one of the questions that I had. These appeals --  
5 there were two appeals that were joined together: the appeal  
6 of Woodland Normanstone and the appeal of Phil Mendelson on  
7 behalf of the ANC. Since they were joined together, I would  
8 assume that they can not now be separated.

9 MS. RICHARDS: As I understand the procedure, an  
10 appellant may withdraw the appeal at any time, but this does  
11 not appear to be the -- act of the appellant. The appellant  
12 association was represented by counsel and counsel, if his  
13 client had instructed him to withdraw the appeal, is certainly  
14 free to, you know, make a motion to that effect. There's  
15 nothing in the letter that represents that this is the client  
16 rather than constituent members of the client.

17 CHAIRPERSON HINTON: Well, it's the president of  
18 the association and the association was the client. But I was  
19 troubled by that too, that the letter didn't come from counsel  
20 but came from the president. Although I'm not sure what,  
21 exactly, that means.

22 MS. DOBBINS: Well, it just depends on whether  
23 they're still represented by counsel.

24 CHAIRPERSON HINTON: Exactly.

25 MS. DOBBINS: This is on remand to the Board and  
26 they really -- it's your own procedure at this point.

1 CHAIRPERSON HINTON: Right.

2 MS. DOBBINS: And you have to make some  
3 determination of how you proceed. If you proceed to hear  
4 additional information or take additional testimony, then the  
5 association at that time, can determine whether they intend to  
6 be represented by counsel, et cetera. But at this point, it's  
7 the Board's case because it has been remanded to the Board.  
8 You don't necessarily have to hold hearings or do anything.

9 CHAIRPERSON HINTON: Right.

10 MS. DOBBINS: You know, it was remanded for you  
11 to make specific findings.

12 CHAIRPERSON HINTON: I recall.

13 MS. DOBBINS: The record may contain those.  
14 They just may not have been in your order.

15 CHAIRPERSON HINTON: Right. Right.

16 But if an appellant requests to withdraw their  
17 appeal, it seems --

18 MS. DOBBINS: Well, they're requesting to  
19 dismiss themselves from the appeal, not the appeal itself.  
20 They did not ask that you dismiss the appeal.

21 CHAIRPERSON HINTON: Right.

22 MS. DOBBINS: They asked that they be withdrawn.

23 CHAIRPERSON HINTON: Which actually, we can't  
24 dismiss the appeal because they weren't the only petitioner  
25 bringing the appeal. So, it seems like we go ahead with the  
26 appeal and -- I'm not sure how we could properly deny that

1 request. I think the only thing we can do is grant the  
2 request. We can't make them be an appellant --

3 MS. DOBBINS: That's true.

4 CHAIRPERSON HINTON: -- if they choose to no  
5 longer be an appellant. However, the case will still have to  
6 be dealt with because there's another petitioner.

7 MS. RICHARDS: I'm not satisfied that this is  
8 from appellant, that this represents the --

9 MS. DOBBINS: The association?

10 MS. RICHARDS: -- the association, yes.

11 MS. DOBBINS: Okay. Then we would need to  
12 request additional information from Mr. Aurbach. And he has  
13 indicated that if the Board needs additional information, that  
14 they would provide comments or details.

15 CHAIRPERSON HINTON: Okay.

16 MS. RICHARDS: And if the attorney of record is  
17 no longer representing them, then we need a representation  
18 from --

19 MS. DOBBINS: No. Yes, I know what you need.

20 MS. RICHARDS: -- him that he is not. Then we  
21 need a proper letter from the association saying that this is  
22 the will of the body and that it's been duly adopted by  
23 whatever their procedures are.

24 CHAIRPERSON HINTON: Very good.

25 MS. DOBBINS: Fine.

26 CHAIRPERSON HINTON: Staff is clear then?

1 MS. DOBBINS: Yes.

2 CHAIRPERSON HINTON: We'll request that, and so  
3 we don't need to -- we'll just send the letter requesting more  
4 information before we deal with it.

5 MS. DOBBINS: Okay.

6 CHAIRPERSON HINTON: It also brings up another  
7 question. We probably need to schedule this remand for the  
8 Board to hear.

9 MS. DOBBINS: I think you probably want to put  
10 it on your monthly meeting agenda. Review the portion of the  
11 record that you have, along with the court decision to make  
12 some determination about whether you think you need to have  
13 anything --

14 CHAIRPERSON HINTON: Okay.

15 MS. DOBBINS: -- else heard, or whether you can  
16 make the decision based on the record that's been presented  
17 already.

18 CHAIRPERSON HINTON: That sounds good.

19 MS. DOBBINS: Okay.

20 CHAIRPERSON HINTON: Shall we do that for April?  
21 How does our April agenda look?

22 MS. DOBBINS: May.

23 CHAIRPERSON HINTON: May?

24 MS. DOBBINS: Because we need to give them  
25 appropriate time to get back to the association, to have a  
26 meeting if necessary.



1 CHAIRPERSON HINTON: Okay. Very good.

2 MS. DOBBINS: Okay.

3 CHAIRPERSON HINTON: Do we have a report on the  
4 status of orders?

5 MR. LYONS: Yes.

6 MS. BENNETT: What does the "Y"s mean in the  
7 last column?

8 MR. LYONS: The Y exceptions refer to the  
9 Administrative Procedures Act where the Board is required to  
10 have, before any order can be issued, there must be present on  
11 the Board three members who made up the majority, must still  
12 be -- and the Y on the exceptions column would mean "yes,  
13 exceptions would be required" to have to go through that  
14 process as the Board recently went through the exceptions  
15 process with the Methodist Home.

16 MS. DOBBINS: In other words, you're going to  
17 have to issue a proposed order as opposed to a final order,  
18 and allow for exceptions from parties.

19 MR. LYONS: And the chart is broken down into  
20 two different categories. The upper portion is "Orders  
21 Drafted and Under Review". I should point out that among  
22 those, there are two cases that have the same number that are  
23 noted. That is 15941 of the American University Park  
24 Citizens Association and that was a decision date of June 1,  
25 '94. Then under the same number, American University Park  
26 Citizens Association, and the issue there was a reopening of

1 the record which is dated September 6, '95. They will be a  
2 part of the same order in that upper portion of cases.

3 In the lower portion, "Orders to be Written", if  
4 you go down the column, 15992 and 15993 related to the  
5 Samaritan Inn, they will come out as one order. Then further  
6 down under 16041, the appeals of Louis Rombo, those two cases  
7 would come out as one order. Also, the star noting both cases  
8 where Mr. Clarens was part of a bare majority. Those are  
9 orders that we are giving some urgency to, to try and get  
10 those orders issued prior to his termination with the Board.

11 CHAIRPERSON HINTON: And that's to avoid the  
12 exceptions process?

13 MR. LYONS: That's correct.

14 CHAIRPERSON HINTON: Great.

15 Okay, very good. Does it still look like most  
16 of those orders that Mr. Clarens is the bare majority will  
17 come out by the end of March?

18 MR. LYONS: Yes.

19 CHAIRPERSON HINTON: Good.

20 MR. LYONS: There are 12 of those and we are on  
21 track to do that.

22 CHAIRPERSON HINTON: Great.

23 Are there any questions from the Board members?

24 MS. BENNETT: I have none.

25 CHAIRPERSON HINTON: No, okay.

26 Does that conclude our business, staff?

1 MS. DOBBINS: Yes, Madam Chair.

2 CHAIRPERSON HINTON: Very good.

3 MS. DOBBINS: Oh, Madam Chair, there was one  
4 other item.

5 CHAIRPERSON HINTON: Okay.

6 MS. DOBBINS: The reason that you all scheduled  
7 this public meeting was the George Washington Marvin Center  
8 request for a reconsideration by the ANC. The Board allowed  
9 the ANC an additional time to file their reconsideration  
10 request. That time pushed them past today's date which would  
11 allow for other parties to respond. They got the  
12 reconsideration in on Monday, so the Monday following this  
13 past Monday would be the first opportunity that the Board  
14 would have to review that. That was one of the cases where  
15 Mr. Clarens was, in fact, the bare majority.

16 You also need to make some decision as to how to  
17 deal with that one. If you want someone to read the record  
18 and carry it over until April, or whether you intend to deal  
19 with a Special Public Meeting related to that.

20 CHAIRPERSON HINTON: The other Board members on  
21 that case are Ms. Richards.

22 MS. DOBBINS: And Mr. Clarens.

23 CHAIRPERSON HINTON: Mr. Clarens.

24 MR. LYONS: Mr. Parsons, Ms. Richards and Mr.  
25 Clarens, yes.

26 CHAIRPERSON HINTON: Why don't we schedule that

1       for --

2                       Is there room on the April agenda, on the April  
3       meeting agenda?

4                       MR. LYONS:   Mr. Clarens would not be  
5       participating at that point.

6                       CHAIRPERSON HINTON:   Right.   I would be willing  
7       to read the record.

8                       MS. RICHARDS:   Okay.

9                       CHAIRPERSON HINTON:   Would you like to read the  
10      record?   You're already on the case.

11                      MS. RICHARDS:   I'm on it.   I was going to  
12      suggest that you and Ms. Reid read the record.

13                      CHAIRPERSON HINTON:   Yes.

14                      MS. DOBBINS:   Then we would send it to both of  
15      you.   If somebody's going to read the record, we would send it  
16      to both Board members.

17                      CHAIRPERSON HINTON:   Why don't we do that?  
18      Okay.

19                      MS. DOBBINS:   Thank you.

20                      CHAIRPERSON HINTON:   Very good.

21                      (Whereupon, the Special Public Meeting was  
22      adjourned at 10:29 a.m.)

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